RECENT DEVELOPMENTS

DESIGNATION OF SITUS OF AWARD IN ARBITRATION AGREEMENT HELD A REQUIREMENT OF STATUTORY ARBITRATION

Ockrant v. Railway Supply & Mfg. Co.
111 Ohio App. 276, 165 N.E. 2d 233 (1960)

Plaintiff brought an action in accordance with Chapter 2711 of the Ohio Revised Code to obtain summary enforcement in common pleas court of an arbitration award made pursuant to the terms of a contract.[1] The trial court dismissed, concluding that it did not have jurisdiction because the award failed to meet the requirements of Chapter 2711.[2] The court of appeals affirmed on the ground that the parties had failed "either expressly or by implication" to specify in the agreement "the county in which the arbitration shall be held and the award made."[3] The arbitration proceedings had been conducted in accordance with the rules and under the auspices of the American Arbitration Association.

The court observed that "at no place in the agreement to arbitrate or in the award[4] or at any other place in the proceeding was any reference made to the forum in which the award could be enforced, or the place where the award was to be made."[5]

Section 2711.08 of the Ohio Revised Code establishes the procedural requirements for statutory enforcement of an arbitration award. The award 1) *must* designate the county in which it was made, 2) *must* be in writing, and 3) *must* be signed by a majority of the arbitrators. The section further provides that the parties to the arbitration agreement *may* specify therein the county in which the arbitration shall be held and the award made. If such specification is included in the agreement the court of common pleas of that county has exclusive jurisdiction to enforce the subsequent award.

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[1] The parties had entered into a lengthy agreement for the allocation and distribution of mutually held assets involving a complicated corporate reorganization and "spin-off." Contemplating the possibility of disagreement the parties provided for arbitration of any disputes that might arise under the contract.

[2] Ockrant v. Railway Supply & Mfg. Co., 81 Ohio L. Abs. 525, 160 N.E.2d 435 (C.P. 1959), 14 Arb. J. (n.s.) 219 (1959).

[3] Ockrant v. Railway Supply & Mfg. Co., 111 Ohio App. 276, 278, 165 N.E.2d 233, 234 (1960).

[4] It was appellant's position that the place of the award was mentioned in the award itself. Appellant argued that a transmittal letter from the regional office of the American Arbitration Association attached to the award containing the place of the award ought to be considered part of the award for the purposes of the statute, but this view was not accepted by the trial court. The court of appeals did not specifically discuss this question although the issue was raised in appellant's brief. Brief for Appellant, p. 5. Since this point is not considered in the opinion, the merits of the contention are not discussed in this note.

[5] Ockrant v. Railway Supply Co., *supra* note 3.

The court's interpretation of the provisions of section 2711.08 is of major significance in the area of arbitration law in Ohio. At common law, the courts were reluctant to enforce private arrangements for the settlement of disputes,[6] and limited their recognition of such settlements to cases where the agreement to arbitrate arose subsequent to the dispute involved.[7] Recognition and enforcement of arbitration awards made as a result of a submission were provided for by statute in the Northwest Territory in 1799.[8] This statute was construed to require that the arbitration award be in writing and that the place of the award be designated therein.[9] Jurisdiction for proceeding under the statute was conferred by indicating in the submission bond (agreement) the county in which the award was to be made.[10] This interpretation is clearly reflected in the present Ohio arbitration statute. However, many arbitration statutes in other states,[11] as well as the Uniform Arbitration Law,[12] require only a minimum of procedural specifications on the theory that private arbitration of disputes is now to be encouraged rather than discouraged.[13]

Notwithstanding the stringent procedural requirements of the Ohio arbitration law, the courts have held that the arbitration law is to be liberally construed.[14] But in the instant case, the court's strict interpretation of section 2711.08 can only impede statutory enforcement of arbitration awards.

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[6] Utilities Worker's Union, Local 116 v. Ohio Power Co., 49 Ohio L. Abs. 619, 77 N.E.2d 629 (C.P. 1947); "Enforcement of Submission Agreements," 9 Ohio St. L.J. 329, 331 (1948).

[7] At common law this was termed a "submission." Black's Law Dictionary 1594, 4th Ed. (1951).

[8] Acts of the First General Assembly of the Northwest Territory, Chap. XCL § 2 (1799), 1 Chase, Revised Statutes of Ohio 218, (1833).

[9] Strum v. Cunningham, 3 Ohio 286 (1827), construing § 2 of the arbitration act of 1799.

[10] 1 Chase, *supra* note 8, at 218, ". . . and shall expressly state their agreement that submission may be made a rule of any court of record within the territory or that it may be made a rule of such court as they may name or point out in their submission."

[11] For example, New Jersey and New York require only that the award be in writing and signed by a majority of the arbitrators. Jurisdiction may be determined by designation in the agreement, or if no designation is made, the award may be enforced in any court having general jurisdiction. See N.J. Stat. Ann. Ch. 10 § 1, 6 (1941); N.Y. Civ. Prac. Act. § 1459 (1939). The basis of jurisdiction of the court in Wisconsin is the county in which the award is made. Wisc. Stat. Ann. § 298.09 (1958), and Connecticut bases jurisdiction upon the county of residence of either of the parties. Conn. Gen. Stat. Ann. tit. 52 § 417 (1958).

[12] The Uniform Arbitration Act (1955) requires that the award be in writing and that it be signed by a majority of arbitrators. There are no specifications as to jurisdiction of the court, thus leaving the question to be determined by general considerations of jurisdiction.

[13] 6 C.J.S. Arbitration and Award § 1, (1937); 3 Am. Jur. Arbitration and Award § 4, (1936).

[14] Brennan v. Brennan, 164 Ohio St. 29, 128 N.E.2d 89 (1955); Springfield v. Walker, 42 Ohio St. 543 (1885); Childs v. Updyke, 9 Ohio St. 333 (1859).

This court's construction makes jurisdiction of the court of common pleas, for the purpose of the statute, depend upon the designation in the arbitration agreement itself[15] of the county in which the arbitration is to be held and the subsequent award made. This requires interpreting that portion of section 2711.08 which states that "the parties to the agreement . . . may specify therein the county in which the award is made . . ." as meaning that the parties *must* so specify if summary enforcement of an award under the statute is to be available.

The court has defeated the clear intent of the legislature to give the parties the option to designate in the agreement the county in which the award is to be made, and in the event that such option is exercised, to make jurisdiction of the court of common pleas of that county exclusive. In the event that no county is designated in the agreement, then the proper jurisdiction for purposes of statutory enforcement would be determined by that portion of section 2711.08 requiring designation in the *award* of the county in which it was made. Section 2711.09 makes this interpretation not only plausible but the only reasonable one the statute can bear. It provides: "At any time within one year after an award is made, any party may apply to the court of common pleas in the county within which such award was made for an order confirming the award."[16] There is no mention of the proposition that jurisdiction depends solely upon designation in the agreement of the county in which the award is to be made.

An interpretation more consistent with the present philosophy of arbitration and more responsive to the legislative intent is that the provision relating to designation in the arbitration agreement of the county in which the award is made is permissive in nature and may be invoked at the option of the parties to the arbitration agreement. Other states with similar statutory requirements have resolved the problem either through the statute itself[17] or by court decision.[18] In either event, the result has been that phrase-

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[15] "It will be observed that *jurisdiction* of the court of common pleas is *dependent* on the parties specifying in the arbitration agreement the county in which the arbitration 'shall be held and the award made.'" (Emphasis added.) Ockrant v. Railway Supply, *supra* note 3, at 278, 165 N.E.2d at 233 (1960).

[16] Ohio Rev. Code § 2711.09 (1958).

[17] For example, the Cal. Code of Civil Proc. § 1281 provides: "If the writing does not specify [the court] the judgment may be entered in the supreme court of the county . . . in which the arbitration was had." See Aurandt v. Hire, 175 Cal. App. 2d 758, 762, 346 P.2d 800, 803 (1959). N.Y. Civil Proc. Act § 1459, "Arbitration . . . shall be deemed a special proceeding of which the court specified in the contract . . . or if none be specified the supreme court for the county in which one of the parties resides or is doing business or in which the arbitration has been held shall have jurisdiction."

[18] Construing the Illinois statute containing a provision permitting designation in the agreement of the court in which the award is to be enforced, the Supreme Court of Illinois held that an arbitration agreement need not name the particular court in which judgment may be obtained and any court of record of competent jurisdiction over the subject matter may enforce the arbitration award on application by any party to the award. Seaton v. Kendall, 171 Ill. 410, 49 N.E. 561 (1898).

ology couched in permissive terms does not render an arbitration award unenforceable merely because the parties have failed to avail themselves of the full opportunity of the statutory provisions.[19]

It was unnecessary in *Ockrant* to reach the permissive portion of section 2711.08. It was noted early in the court's opinion that the award itself did not specify the county in which it had been made.[20] The language of this portion of the statute is clearly mandatory—the award *must* state the county in which it was made. By going beyond the mandatory provisions of section 2711.08, the court has unnecessarily cast doubt upon the permissive provision of the statute.[21]

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[19] Arbitration proceedings in those states having more stringent requirements operate under clear legislative mandates. Arizona, Kentucky, Maryland and Texas, for example, require the agreement to arbitrate to be filed with the appropriate court prior to arbitration if statutory enforcement of the resulting award is desired. See Ariz. Rev. Stat. § 12-1501, 1502 (1956), Ky. Rev. Stat. § 417.011 (1955), Md. Ann. Code art. 75 § 16 (1957), Texas Ann. Civ. Stat. art. 226 (1959). The arbitration statutes of the United States, Iowa, Indiana, and West Virginia are among those jurisdictions explicitly requiring designation in the agreement to arbitrate of the court in which the resulting award is to be enforced. See Arbitration Law 9 U.S.C. § 9 (1947); Iowa Code Ann. § 679.2 (1946); Ind. Stat. Ann § 3-2-3 (1946); W. Va. Code § 5499 (1955).

[20] "It should be noted that at no place in the agreement to arbitrate or *in the award* . . . was any reference made to the . . . *place where the award was made.*" Ockrant v. Railway Supply, 111 Ohio App. 276, 277. (Emphasis added.) See *supra* note 4. The court treated the issue of whether the transmittal letter satisfied the requirements of § 2711.08 as having been determined in the negative.

[21] Ockrant v. Railway Supply & Mfg. Co., *cert. denied,* Docket No. 36, 487 (1961).